S.B. Civil Writ Petition No.4496/04

02.01.2007

Hon'ble Mr. Justice Mohammad Rafiq

Mr. R.M. Sharma for petitioner.
Mr. Pankaj Gupta for respondent.

In this matter the petitioner has challenged the order dated 22.4.04 whereby the Court of Civil Judge (JD) & Judicial Magistrate, Bandikui has taken the written statements filed by the respondent no.1 on record. Learned counsel for the petitioner has argued that according to the provisions of Order 8 Rule 1 CPC the defendant was required to file written statements within 30 days from the date of service of summons. According to proviso to Rule 1 of Order 8 if the written statement is not filed by the defendant within the said period of 30 days, he could be allowed to file the

same on such other date, as could be specified by the Court for reasons to be recorded in writing but such period could not exceed 90 days from the date of service of summons. I have perused the order sheets of the relevant case which have been reproduced in para 5 of the writ petition. When the matter was listed on 23.4.2003 in spite of service no one from the side of defendants was present in the Court and the matter was ordered to proceed ex-parte against the defendants. When the matter was again listed on 17.5.2006, on the request of the learned counsel for the defendant, time was allowed to file written statement and the matter was posted for 14.7.2006. When the matter was again taken up on 14.7.2006, no one appeared for either of the parties because the

lawyers on that date had suspended the Court work and in these circumstances the Court on its own deferred the matter again for 19.8.2003 to enable the defendants to file written statements. When the matter was thereafter taken up on 19.7.2006, written statement filed by the defendant was allowed to be taken on record. It was on that date the plaintiff filed the application objecting to the written statement being taken on record. It is this application which has been rejected by the learned trial Court by the impugned order dated 22th of April, 2004.

Having heard the learned counsel for the parties and examined the impugned order, I find that when the Court itself on 14.7.2006 in the absence of counsel of either of the parties permitted the

defendant to file written statements upto 19.8.2003 and when actually written statement was filed on that day, the period of time as prescribed in Order 8 Rule 1 of the CPC should be taken to have been extended by virtue of Section 148 CPC. In my considered view, the impugned order has not occasioned any miscarriage of justice inasmuch when the Court itself had allowed in the facts of the case the time upto 19.8.2003, I find no material irregularity in taking the written statement on record. Impugned order therefore does not suffer from any illegality and infirmity so as to warrant interference by this Court. The petition is accordingly dismissed with no order as to costs.

(Mohammad Rafiq),J.

Rs/-